Commissioner Burnett
Sent to Regular Mailing List

STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
744 Broad Street Newark, N. J.

BULLETIN NUMBER 140. October 2, 1936.

1. APPELLATE DECISIONS - LAVELLE vs. WAY.

MARGARET LAVELLE,

Appellant,

-vs-

HONORABLE PALMER M. WAY, JUDGE OF THE COURT OF COMMON PLEAS OF CAPE MAY COUNTY, AND ISSUING AUTHORITY,

Respondent.

ON APPEAL

CONCLUSIONS

A. J. Cafiero, Esq., Attorney for Appellant.
Rex A. Donnelly, Esq., Attorney for Respondent.
Samuel Eldredge, Esq., Attorney for Objectors.

BY THE COMMISSIONER:

Appellant appeals from the refusal to renew her retail consumption license for premises 2206 New York Avenue, North Wildwood.

The neighborhood is strictly residential. The nearest stores or business places are located more than three blocks away.

Appellant has held a consumption license at these premises ever since Repeal.

In June 1934 the license was granted over remonstrances of the people of the neighborhood, charging noise, nuisance and disturbance and the undesirable class of people brought to the neighborhood.

In September 1934, a rule to show cause why the license should not be revoked, was issued, based on charges of Sunday morning sales, loud noises, singing, clapping of hands and use of vile language, etc., after 2:00 A. M. coming from the licensed premises, but the rule was dismissed.

In June 1935, after remonstrances, the license was granted but subject to the special restriction, viz:

> "The license of Margaret Lavelle at 2206 New York Avenue, North Wildwood, will be granted with the following restrictions: The piano or other loud instruments, excepting the radio, shall not be played on the premises in the rooms where alcoholic beverages are sold or dispensed. Because of the residential section in which this license is located, strict order and decorum must be had in order to insure peace and quietness in the neighborhood to those who own real estate near the licensed premises."

Appellant candidly admits that Judge Way made it plain to her at the time her 1935 renewal was granted that he would not look favorably upon renewal this year; that he did not want to take away the license peremptorily but allowed her one year to seek a new location and imposed restrictions in the meantime; that he advised her to look for another place.

In June 1936, renewal of the license was denied. Hence, this appeal.

Judge Way assigned the following reasons:

"This license is refused. It not only is in a neighborhood that quite generally considers this privilege detrimental to the quiet and peaceful enjoyment of its vested rights in its property owners, but has to my satisfaction justified its position by virtue of the testimony given over a period of the past two years, in protest to the existence of these licensed premises.

"At the conclusion of the hearing upon the neighborhood remonstrance last year - I made it plain to the licensee that I would not look favorably upon the renewal of the license this year. I did this, (and the licensee and remonstrants knew why) because I did not want to take away the license peremptorily, but tried to allow one year for the licensee to seek a new location. I imposed restrictions in the meantime.

"According to the testimony adduced, there has been an undesirable condition continued since last year, also the licensee has not moved or made any apparent serious attempt to respond to the opportunity afforded her. I felt that after last year's remonstrance, there existed ample and sufficient reason to refuse a renewal of the license."

To this, appellant pleads that the denial was erroneous because:

"1. That the premises for which a license was sought have been licensed as such since the sale of alcoholic beverages became legal in this State.

"2. That the Appellant has received from this issuing authority a Plenary Retail Consumption License for these same premises, although on each such application the remonstrants who objected and the subject of their objection was practically identical to that now offered to Respondent and which Respondent had determined adversely to the Remonstrants and in favor of this Appellant.

"3. That the chief and principal objection of the Remonstrants has always been that the premises to which a license was granted and for which a license is now sought, is that the neighborhood is a residential one, and this having been determined adversely to Remonstrants and in favor of Appellant by the issuing authority in June 1934, and again in June, 1935, it is res adjudicata before this issuing authority, on the hearing of June 10th, 1936, in the absence of evidence that the neighborhood has changed."

The first question arising on this record is whether the plea of res adjudicata is good.

Technically it is defective because of lack of iden-

tity of the several remonstrants as being the same in the different years. Moreover, no power has ever been delegated to license issuing authorities to make in rem adjudication binding a municipality or any part of it. Again, it involves an obvious non-sequitur for it does not follow that because licenses were granted in previous years, which is a matter of sound discretion, therefore the neighborhood was not residential, which is a matter of cold fact.

Substantially there is no merit in such a plea in liquor cases because (1) they are not private controversies but matters affected with a public interest; (2) there is no such thing as estoppel against a State; (3) a licensee has no vested right to a renewal; (4) if a mistake was made in 1934 by issuing a saloon license in a residential neighborhood, and leniency shown in 1935 in allowing its continuance subject to a restriction and coupled with a warning, that is no reason for perpetuating the error in 1936; (5) each renewal of every license must stand on its own bottom from year to year, according to the actual conditions as they then appear in fact; (6)liquor control is not to be shackled by musty applications of res adjudicata, but is rather to grow and to change as experience teaches. It is a part of the State's inherent police power. No one can put that in chains.

If the plea were good, the mistakes of issuing authorities would bind their successors and be visited upon future generations. There is no principle of "Once a license, always a license". Everything depends on the facts. There is no "must" in privileges. The plea is, therefore, dismissed.

It remains to inquire if the action of the issuing authority in denying the renewal was reasonable. For, although as just decided, there was no mandatory obligation to renew it just because it had once been given, yet it should not, on the other hand, be arbitrarily or unreasonably withheld. In simple fairness to existing licensees who, presumably, on the faith of previous license, have expended money and made commitments, most careful scrutiny must be made where renewal is denied. If fairness to the individual must give way to the best interests of organized society, sound reasons in support should appear clearly, cogently and convincingly. In renewal cases, private justice is weighed as against the public interest of the community. Ford vs Township of Knowlton, Bulletin #84, item 5; Pingatore vs. Red Bank, Bulletin #133, item 3; Borelli vs. Red Bank, Bulletin #133, item 4; Costa vs. Red Bank, Bulletin #133, item 5; Auletto vs. Camden, Bulletin #137, item 3.

Examining the testimony from this standpoint, I find (1) that the neighborhood is strictly residential; (2) that while several high class witnesses have testified to visits at appellant's place and that they observed nothing improper or disorderly or noisy at the time of their respective visits, several others, equally credible, resident in the immediate neighborhood, testified to loud and objectionable noise, "quite a commotion, a couple of them pretty well lit up having a good time and last night at eleven I thought the world was coming to an end"; fighting, "Labor Day night between two and three the beating somebody got there is something terrible.....It was a woman's voice screaming for help"; cursing, "When they close up at night they raise Cain and we get the benefit of that. It is not much fun to get that in your bedroom window", vile and profane language, "not fit for a woman or man to hear, let alone a child"; persons coming out intoxicated from the premises, "I have seen more drunken people come out of there this spring than all last summer. Sunday, a week ago, there

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was a drunken man came down and pointed out our house and hollered 'Those were the people who complained about Lavelle and that if they were not careful they would flog them'. Yesterday I saw a drunken man come out of there and go down our street. A week and a half ago I was awakened at three - we have a dog and he barked - and I got up to see what it was, and there was a drunken man around our house, and then the neighbors wonder why I want a dog"; and general nuisance, "Sunday nights, the young element goes into Lavelle's and get a quart of liquor and stand up under my tree and drink the liquor and throw the bottle on my lawn. I don't want to live in that kind of conditions".

These things are wholly out of place in a residential neighborhood. The purging process of Judge Way so far from being arbitrary was exemplary. A mistake was made in ever granting this license located as it is in the midst of homes. It is not too late now to correct that mistake. Appellant cannot complain, especially in view of the fair warning which she received from Judge Way in 1935 that he would not look with favor upon a renewal of her license this year. The proofs show that he did not act arbitrarily or unreasonably in refusing to renew the license but, rather, that he has corrected a situation which should never have been allowed in the first place.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: September 22, 1936.

2. APPELLATE DECISIONS - GIRARD vs. TRENTON.

FRANK GIRARD,)
Appellant,)
-vs-) ON APPEAL
CITY COUNCIL OF THE CITY OF TRENTON,) CONCLUSIONS
Respondent.)

. . . . . .

John H. Kafes, Esq., Attorney for Appellant.
Adolph F. Kunca, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of a renewal of plenary retail consumption license for premises #622 South Clinton Avenue, Trenton.

The evidence establishes that the premises were permitted to remain open on several occasions after the closing hour fixed by respondent's ordinance; that waitresses employed in the premises were served with alcoholic beverages while on duty, in violation of respondent's ordinance; that on at least two occasions serious disturbances took place on the premises, during one of which it was necessary to take a participant to the hospital; that the appellant was frequently observed in an intoxicated condition during business hours; that the general reputation of the place is not good.

There is further testimony that appellant permitted a minor employee to draw beer and mix and serve other alcoholic beverages. The boy, John Zara, is 19 years of age. Appellant knew that he was under age. Appellant held a state permit to employ the boy as a cook and waiter, conditioned that the minor shall not participate in any way in the sale of alcoholic beverages. Appellant knew that allowing the boy to tend bar was in violation of Section 23 of the Control Act. He tried to dissuade him from attending the hearing. John's testimony proved very damaging. In defense, appellant testified that John had violated his instructions in this respect but the cross examination was devastating- so was the eloquent silence to the last question:

"Q When was the first time Johnny starting mixing drinks and serving contrary to your instructions?

"A Always.

"Q When was the first time?

"A The first day he arrived.

"Q And he worked there ten months?

"A Yes.

"Q And you tolerated that for ten months?

"A I told him go on out oftentimes.

"Q Still and all he came back and you permitted it to go on?

" (No reply)"

I cannot ascribe appellant's frequent admonitions to Johnny as made solely with zealous care that the law should be scrupulously observed for his own witness naively quoted him thus:

"Q How many times did you hear Mr. Girard warning him about going in back of the bar?

"A Plenty times.

"Q A dozen?

"A More than that. He wanted to take things in his own hands. Mr. Girard says, 'Johnny, get away, Mrs. Moore is liable to come in and catch you.'"

The denial of the renewal was thus amply justified on several grounds. The action of respondent is therefore affirmed.

D. FREDERICK BURNETT
Commissioner

Dated September 23, 1936.

3. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - TWO DAY SUSPENSION FOR SALE TO A TWELVE YEAR OLD BOY INSUFFICIENT DETERRENT - HEREIN OF THE MASTER BEING RESPONSIBLE FOR THE ACTS OF HIS SERVANT.

Walter Beisch, Secretary, September 23, 1936.
Municipal Board of Alcoholic Beverage Control,
North Bergen, New Jersey.

Dear Mr. Beisch:

I have before me staff report of proceedings before your Municipal Board against Thomas Traficante, 686 Lincoln Street, for selling beer to a boy 12 years old, and note the licensee was found guilty and his license suspended for two days.

While I am not expressing any opinion on the merits of the case because, perchance, it may come before me on appeal and my mind, therefore, must be entirely open on that score, I do appreciate the prompt and efficient cooperation of your Board and ask that you extend to them my thanks.

The two day suspension inflicted by your Board is not likely to prove a sufficient deterrent. I believe that the penalty should be so substantial as to put licensees on their own toes to break up the evil which, if not checked, will bring us back to Prohibition quicker than anyone realizes. If one knew in advance what was going to happen, it might be different, but I daresay the man who sold a few beers to that Bayonne boy and girl, little dreamed that a few hours later, they would be involved in a most horrible, unnatural murder. Enclosed is a copy of my letter in that case. (Bulletin #139, Item #6.)

In the present case the boy was but twelve years of age. It takes no great degree of intelligence for anybody to determine that such a child is a minor. No sympathy is, therefore, to be wasted on any licensee who makes such a sale. If, as I presume from the staff report, the sale was made by a bartender, a ten day suspension, at the least, of the proprietor's license would make him a very active force in making sure that thereafter no bartender of his ever got him into such trouble again. In some respects, it is a harsh doctrine that an employer should be liable for the acts of his employees, but strict enforcement of that doctrine will go a mighty long way to save the retail liquor industry from annihilation. It's the only fair thing to other licensees who refuse to take chances. It's the one thing that will put the public solidly behind your Board.

Please ask your Board hereafter, in all cases of sales to minors, to inflict a penalty which pains till it hurts. Eventually that will mean that the trade will put its own house in order. Proprietors won't be able to alibi themselves on their bartenders and your Board won't have the unpleasant job of meting out such penalties.

Cordially yours

D. FREDERICK BURNETT
Commissioner

4. SPECIAL PERMITS - WHOLESALE LICENSEES AND OUTINGS OF EMPLOYEES.

September 21, 1936.

Dear Sir:

We are planning to give an outing to the employees of our firm this coming Sunday at Melhaven Grove, N. J. Only our employees will be permitted to attend this outing. There will be no strangers. There will be no charge to attend this affair, as the entire expense will be borne by the firm.

We are contemplating serving alcoholic beverages as part of the refreshments, i.e., cocktails, highballs, mixed drinks, etc., and we desire to know whether or not it is necessary for us to obtain a special permit from your office in order to do so.

Inasmuch as this affair is not open to the general public and since there will be no charge of any kind to those attending, it is our belief that it will not be necessary for us to obtain a special permit. In addition thereto, it is our belief also, that the serving of alcoholic beverages above mentioned in the aforesaid manner, would not be a sale within the contemplation of the act, inasmuch as we are not attempting to advertise any given brand or our own firm, or establish any goodwill by serving these liquors. It is only done for the purpose of rewarding our employees for their faithfulness to the firm and to add to the general good "spirits" of the firm.

We do not expect to derive any direct benefit from this affair, other than the continued good wishes of our employees.

Will you advise us whether or not we are correct in these conclusions.

Very truly yours,

JOSEPH H. REINFELD, INC.

September 23, 1936.

Joseph H. Reinfeld, Inc.,
Newark, N. J.

Gentlemen:

I have your letter of the 21st regarding the outing which you will give for your employees at Melhaven Grove this coming Sunday.

If you were not a licensee, you would not need any special permit to serve the alcoholic beverages in the manner in which you propose. Alcoholic beverages which are given away really gratuitously in every respect, with no admission charged, nor tickets sold, nor special assessments made, are not sold within the contemplation of the Control Act but are out and out gifts under which circumstances no special permit is required. Re Berry, Bulletin 121, item 2.

But, because you are a licensee, you do need a special permit for the outing even though no fee is charged nor tickets

are sold. The reason is that gratuitous deliveries or gifts of alcoholic beverages by licensees, are expressly declared by Section 1, sub. (v) of the Control Act, to be sales. Re Camden County Beverage Co., Bulletin 118, item 1. Under the Act, it is a sale even though you give the alcoholic beverages away free. Moreover, the persons attending the outing will be consumers. Your plenary export wholesale license does not permit you to sell to consumers but only to licensed wholesalers and retailers. Furthermore, Section 23 of the Act says that the operation and effect of every license is confined to the licensed premises. Hence, all sales under your license must be confined to your licensed premises.

In order that you may sell or deliver to consumers otherwise than on your licensed premises, a special permit authorizing same must first be obtained. Cf. re Leimer, Bulletin 131, item 6.

I see no reason, however, why you should not be entitled to a special permit for the occasion.

I am enclosing herewith an application for a special permit. Fill it out, have it signed as indicated by the Municipal Clerk and the Chief of Police of the municipality in which the outing will be held and return it to this office. The fee for the permit will be $10. It must accompany the application. As the alcoholic beverages which you will give away at the outing will, in the contemplation of the Act, be sold, they must be included in your monthly report of sales to the State Tax Department.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

5. DISCIPLINARY PROCEEDINGS - ILLICIT BEVERAGES - FORTY-FIVE DAY SUSPENSION.

September 24, 1936.

Frank A. Priest, Esq.,
Township Clerk of Hamilton,
Municipal Building,
Trenton, N. J.

Dear Mr. Priest:

I have before me staff report of the proceedings before your Township Committee against Adolph Friderich Koerner charged with possession of illicit alcoholic beverages. The Investigators report that the license held by Koerner for premises 2300 Nottingham Way, Hamilton, has been suspended for forty-five (45) days.

The prompt and high class manner in which your Committee performed its duty deserves the respect of every thinking citizen. I had occasion on March 23rd last to write a letter along a similar vein to your Committee commending its action in revoking outright where the licensee was charged with conducting a disorderly house. Licensees in Hamilton Township must well know that the Township Committee means business. It is only in this way that the disagreeable task of administering punishment will become less and less.

Please express to the members of the Committee my respect.

Sincerely yours,
D. FREDERICK BURNETT
Commissioner

6 DISCIPLINARY PROCEEDINGS - WAGERS ON WHISKEY DRINKING FOLLOWED BY DEATH FROM ACUTE ALCOHOLISM - DISCUSSION OF PENALTY.

September 25, 1936.

A. J. Soriano, Esq.,
Clerk, Board of Commissioners,
City Hall,
Raritan, Somerset County, N. J.

Dear Mr. Soriano:

I have staff report of the disciplinary proceedings before your Board against James Danyluk, which states that Danyluk wagered a customer that he could not drink six whiskies as fast as the licensee could fill the glass; that the six whiskies were poured out and consumed one after the other; that shortly after the licensee declared the customer had won the bet, the customer left and was taken to his home and died in a few hours of acute alcoholism.

I note the licensee pleaded guilty and that his license was suspended for seven days.

When the privilege of selling liquor is abused - and every right thinking person will agree that a gross abuse occurred in this case - stern measures are necessary. It is such conduct which, if not stopped short, will justify the return of Prohibition.

As regards the punishment inflicted, frankly I am not sure of the proper answer. It is a case of first impression. I hope its like never occurs again. There is no penalty born of experience to fit this case. If hindsight demands revocation, foresight pleads that what happened was not intended or expected. No punishment can atone for a human life. Bearing in mind the terrible reaction that must have been visited upon the conscience of the licensee as a result of his thoughtless wager, perhaps the judgment of your Board was the fair solution. It certainly will be if this sad case proves an object lesson and is taken to heart by all licensees.

Please express to your Board my appreciation for its prompt action and thoughtful consideration of the case.

Very truly yours,

D. FREDERICK BURNETT
Commissioner.

7. LICENSES - NO LIQUOR LICENSE OF ANY KIND MAY BE ISSUED TO ANY INDIVIDUAL WHO HAS BEEN ADJUDICATED GUILTY OF COMMITTING TWO OR MORE VIOLATIONS OF THE ALCOHOLIC BEVERAGE CONTROL ACT.

September 28, 1936.

Charles Swenson, Esq.,
Town Clerk,
Municipal Building,
West New York, N. J.

Dear Mr. Swenson:

I have staff report of the proceedings before your Board of Commissioners in connection with charge against Joseph

Cohen, holder of Limited Retail Distribution License DL-16, for having sold beer during the period when his license had been suspended for having violated the conditions thereof. I note the licensee pleaded guilty and that his license was suspended for ninety (90) days, commencing September 23, 1936.

I find that this is the third violation of the Alcoholic Beverage Control Act which Joseph Cohen has committed, viz:

1. On September 24, 1935, his license was suspended for 48 hours for having sold contrary to the terms of his license.

2. On June 23, 1936, his license was suspended for 30 days, for having sold contrary to the terms of his license.

3. On September 22, 1936, his license was suspended for 90 days for having sold contrary to the terms of his license.

I am glad indeed to note the progressively severe penalties imposed by your Board against one who apparently has no conception of what obedience means.

Strictly no license should have been issued to him for the present fiscal period beginning July 1st because Section 22 of the Control Act provides:

"No license of any class shall be issued to any individual who xxxxxxxxxxxxxxxx has committed two or more violations of this act."

It is therefore open to your Board, and I so recommend basing its action on Section 22, to proceed to revoke his license outright.

In any event, please make notation at once on your record to call to the attention of the Township Committee that no alcoholic beverage license of any kind may be issued to Joseph Cohen in the future.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

8. FORFEITURE PROCEEDINGS - UNREGISTERED STILL PARTS AND ALL OTHER PERSONAL PROPERTY LOCATED IN BUILDING WHERE THEY WERE FOUND ORDERED FORFEITED TO STATE- ALL STILLS MUST BE REGISTERED WHETHER OR NOT ACTUALLY INTENDED FOR USE IN THE MANUFACTURE OF ALCOHOLIC BEVERAGES - CONSTITUTIONALITY OF STILL ACT CONSIDERED.

#3175)
In the Matter of the Seizure on)
July 15, 1936, of certain alleged)
unlawful property found in the)
possession of one Joseph Arrico,) On Hearing
T/A West End Copper Works, at)
premises known as #610-614 South) Conclusions, Determination
13th Street, in the City of Newark, and Order
County of Essex and State of New)
Jersey.)
- - - - - - - - - - - - - - - - - - - -

Appearances:

Samuel Voltaggio, Esq., for Claimant, Joseph Arrico, T/A West End Copper Works

Albert J. Snook, Esq., for Claimant, The Linde Air Products Co.

BY THE COMMISSIONER:

On July 15, 1936, investigators employed by the Department of Alcoholic Beverage Control seized from the premises of Joseph Arrico, trading as West End Copper Works, located at #610-614 South 13th Street, Newark, property more specifically described in the schedule annexed hereto and alleged to be unlawful under the provisions of P. L. 1934, c. 84, as amended by P. L. 1935, c. 255. In accordance with the provisions of said Act, notice of hearing to determine whether the seized property constitutes unlawful property thereunder was duly posted, advertised and mailed to the parties in interest, and hearing was held on August 21, 1936.

Subsequent to the institution of the statutory proceedings but prior to the hearing, an action in replevin to recover part of the seized property was instituted by Joseph Arrico. At the hearing, however, counsel for Joseph Arrico appeared and, after expressing the following reservation, participated in the hearing and introduced testimony on behalf of Joseph Arrico:

> "The reservation is that any questions as to the title of the property or ownership thereof is to be reserved to the defendant until such time as the Circuit Court may pass upon it, and the purpose this morning is to go into the question as to whether or not any of the property seized by the agents was unlawful property."

The issue is whether the seized property constitutes "unlawful property", and in the language of the statute "if, after such hearing, the Commissioner determines that the seized property constitutes such unlawful property he shall declare such property forfeited***". The reservation, under its terms, is not directed against the propriety of the determination in the present proceedings as to whether the property constitutes unlawful property and the effect of the determination herein made upon the replevin action need not be considered here. It should also be noted that there was no consent to the reservation by the Commissioner and it is difficult to see how any reservation could affect the present proceedings, which must be carried through pursuant to statutory mandate.

At the hearing Inspector-in-Chief White, in charge of the still squad of the Department for the past two years, testified in detail as to the seizure. His testimony establishes that at the time of the seizure there was considerable distillery equipment used in alcoholic beverage activity located at the premises occupied by Joseph Arrico. Several sections of copper columns, several dephlegmators, 132 baffle-plate bubbling cups, a tri-box, a pre-heater in the course of construction, Lyne arms and coils, all constituting still parts, some new and others used, and all fit for further use, were found. There were enough

still parts to set up several complete stills for the distillation of alcoholic beverages. It is admitted that none of the foregoing stills or still parts was at any time registered with the Commissioner of Alcoholic Beverage Control. In addition to the distillery equipment seized at #610-614 South 13th Street, the other personal property described on the annexed schedule and found in the same building was seized at the same time.

Joseph Arrico and several witnesses on his behalf testified at the hearing. It was conceded that the aforementioned property described in Inspector-in-Chief White's testimony was seized at Arrico's premises, and there was no substantial dispute that it constituted still parts. Arrico testified, however, that shortly before the seizure he had purchased a truck load of junk which included the still parts; that he did not know what the still parts were or what they were used for; and that he intended to break up all of the equipment for sale as junk. The explanation is incredible. Arrico says that all of the property in question, in addition to other property, constituted one truck load, which he purchased for $10.00 or $12.00. The value of the property, even after destruction as junk copper, would exceed grossly that sum. It is significant that one of the parts - the pre-heater - was still in the course of construction, and many of the parts were new. An employee of Joseph Arrico testified that he unloaded the property from the truck in question but stated that he saw no baffle-plate bubbling cups. There were 132 such cups seized from the premises. Finally, Arrico admits that he manufactured on the premises one cooling tank containing coils. It is not disputed that this is part of a still.

It is evident that the seized property constitutes unlawful property under the express terms of P.L. 1934, c. 84, as amended P. L. 1935, c.255. Under the Act, property found to be unlawful may nevertheless, in the discretion of the Commissioner, be returned where he is satisfied that the person whose property has been seized "has acted in good faith and has unknowingly violated" the statute. At the hearing counsel asserted the good faith of Arrico and prayed for a return of the seized property under the Commissioner's discretionary powers. The evidence, however, is patently inadequate to establish Arrico's good faith. His story is inherently improbable and it is evident that he has not made an honest explanation.

At the close of the hearing, counsel for Arrico further contended (1) that the Act refers only to stills actually intended for use in the manufacture of alcoholic beverages and that the evidence did not establish that fact; and (2) that the Act is unconstitutional.

The first contention completely overlooks the testimony of Inspector-in-Chief White and the express terms of the statute. Inspector-in-Chief White testified that all of the parts in question were of the type generally used in the manufacture of alcoholic beverages; that he had never seen equipment of that type used for any other purpose; that in particular he had seen baffle-plate type copper columns, such as were included in the seizure, used only in the distillation of high proof spirits, termed "high wines" and that one 20 gallon still, needing only the attachment of coils which were seized with the still to be complete, was of the wash boiler type, common in the manufacture of moonshine whiskey. There is no contradictory evidence.

Furthermore, the Act clearly covers all stills capable of being used in the manufacture of alcoholic beverages, whether intended for such use or not. It reads as follows:

> "Every person having in his possession or custody or under his control any still or any distilling apparatus set up, dismantled or in the process of construction or parts thereof, shall register same with the Commissioner of Alcoholic Beverage Control, who shall have and exercise the same powers of investigation and of prescribing rules and regulations with respect to such stills and distilling apparatus and parts thereof as are accorded to him by the act to which this is a supplement, in connection with the manufacture of alcoholic beverages." P. L. 1934, c. 84, as amended by P. L. 1935. c. 255.

Any requirement that the actual intended use of the unregistered still be established would nullify, in the main, the very purpose of the statute.

The contention that the Act is unconstitutional seems to be grounded on the thought that the title is defective. The Act under which the seizure was made is a supplement to the Control Act. It is supported by the title of the latter Act, which is sufficiently comprehensive to include all matters which may affect alcoholic beverage activity within the State; it is clearly constitutional. See Bulletin #76, Items #7 and #8; State vs. Twining, 73 N. J. L. 683 (E. & A. 1906)

At the hearing, The Linde Air Products Co. appeared, claimed that it had loaned one oxygen tank and one acetylene tank, included in the seizure, to Joseph Arrico and made application for the return thereof. The evidence indicates that this claimant has acted in good faith. However, the Writ of Replevin obtained by Joseph Arrico presumably refers to these tanks and the Commissioner will reserve decision with respect to the claim of The Linde Air Products Co. pending disposition of the replevin action.

It is, on this 23rd day of September, 1936,

ORDERED, ADJUDGED AND DETERMINED that all of the property seized herein and described in the annexed schedule constitutes unlawful property; and it is further

ORDERED that all of said property, with the exception of one oxygen tank and one acetylene tank claimed by The Linde Air Products Co. be and hereby are forfeited to the State of New Jersey and shall be retained for the benefit of State institutions; and it is further

ORDERED that disposition of said oxygen tank and acetylene tank claimed by The Linde Air Products Co. be reserved until the further order of the Commissioner.

D. FREDERICK BURNETT
Commissioner

9. LICENSES - TRANSFERS - A TRANSFER BECOMES EFFECTIVE UPON ENDORSEMENT THEREOF ON FACE OF THE LICENSE - TRANSFEROR MAY CONTINUE IN BUSINESS UNTIL ACTUAL ENDORSEMENT OF TRANSFER ON FACE OF LICENSE PROVIDED HE IS THE OWNER OF THE BUSINESS - TRANSFEREE MAY NOT IN ANY EVENT OPERATE UNTIL LICENSE IS ACTUALLY TRANSFERRED TO HIM ON ITS FACE.

Dear Sir:

The special restaurant consumption license issued to Gustave Rothenbach, C-19, was, at the last meeting of Council, transferred to Mr. Wm. Herzberg, after proper advertising and after receiving the request of Mr. Rothenbach to do so.

It was evidently the intention of Mr. Rothenbach to transfer or sell his business to Mr. Herzberg. It now, however, develops that there has been a hitch in the negotiations. According to Mr. Rothenbach's story, Mr. Herzberg has disappeared and cannot be found.

This leaves the situation where the license has been officially transferred by action of the Council to a person who, it would seem, has given up all interest in the place. Meanwhile Mr. Rothenbach is continuing to operate, and we are permitting him to do so for the present until we can arrive at some decision, with your help. To cancel the action of the Council at the last meeting, thereby leaving the license in the name of Rothenbach, is dangerous, because Herzberg paid the transfer fee and might re-appear and demand the license. To permit Rothenbach to continue indefinitely under a license which he has given up, is not proper either.

Such are the circumstances. How to proceed is a question. I might incidentally mention we have no complaints pending against Rothenbach and have no objection to his continuing the operation of the place.

Yours very truly,

PAUL A. VOLCKER
Township Manager.

September 21, 1936.

Mr. Paul A. Volcker,
Township Manager,
Teaneck, N. J.

Dear Sir:

Where a license is sought to be transferred to another person, formal application therefor must be made to the issuing authority pursuant to Section 23 of the Control Act. Where the application is granted the license must be endorsed pursuant to the Rules Governing Transfers of State and Municipal Retail Licenses. (See Pamphlet, Rules, Regulations and Instructions, p.34.) As soon as the transfer has properly been endorsed upon the face of the license, operations thereunder may be conducted by the transferee, but not by the transferor.

A more troublesome situation is involved where application for the transfer has been duly filed and granted, but endorsement

on the license has not as yet been made. It might be suggested that the transfer should be legally effective as soon as the application is granted. This position, however, would involve substantial administrative difficulties since the license itself would still purport to confer privileges solely on the licensee therein named. Enforcement officials should not be required to search the records of municipal proceedings to ascertain whether the operator of the business is properly licensed but should be permitted to rely upon the terms of the license itself. Consequently, the conclusion has been reached that where application for transfer of a license has been made, the transferor may continue to operate under the license until it is actually transferred on its face, provided he at all times remains the owner of the business conducted under the license. On the other hand, the transferee may not commence operations under the license until he is actually the owner of the business and the license has been transferred on its face to him.

Accordingly, you are advised that, if Mr. Rothenbach is still the owner of the business and the license has not been endorsed on its face to the proposed transferee, he may continue in business; otherwise, he must discontinue operations under the license immediately.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

By: Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel

10. APPELLATE DECISIONS - SZYMANSKI vs. HILLSBOROUGH TOWNSHIP

JOSEPH SZYMANSKI, Appellant,	)	
-vs-	)	
TOWNSHIP COMMITTEE OF HILLSBOROUGH TOWNSHIP, Respondent.	)	ON APPEAL
	)	CONCLUSIONS

. . . . . .

Joseph Szymanski, Appellant, Pro Se,
LaMott Hartshorn, Esq., for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of appellant's application for a plenary retail consumption license for premises located on Hillsborough Road, Belle Meade, Hillsborough Township.

Respondent denied any need for an additional license in the neighborhood.

Appellant testified that several societies from adjoining communities had urged him to obtain a license in order that they might hold Sunday picnics on the appellant's farm at which alcoholic beverages could be served.

The premises are located in a strictly farming community. The township has a population of approximately twenty-eight hundred (2800) and is divided into two districts, each about the same in area. District #1, which has about six hundred (600) voters, has only one retail consumption license. District #2, in which the premises in question are located, has about four hundred fifty (450) voters. There are already issued and outstanding eight retail consumption licenses in that district. That seems plenty. Bare statement of the figures makes the case for respondent.

The right of a municipality to deny an application where the issuance thereof would result in too many licensed places in the neighborhood is well settled. Connolly v. Middletown, Bulletin #81, Item #11; Crisonino v. Bayonne, Bulletin #101, Item #6, and cases therein cited; Palmer v. Englishtown, Bulletin #116, Item #14; Lackowitz v. Waterford, Bulletin #125, Item #12.

The appellant has not sustained the burden upon him of showing that an additional licensed place is needed. Lisi v. Newfield, Bulletin #121, Item #9; Lackowitz v. Waterford, supra.

The action of respondent is affirmed.

Dated: September 30, 1936. Commissioner